# Small Business Joint Ventures & Teaming Arrangements

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# Does the FAR Recognize Teaming?

- The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. (FAR 9.603)

# What Types of Contractor Teams Does the FAR Recognize?

FAR 9.601 Reads:

"**Contractor team arrangement**," as used in this subpart, **means** an arrangement in which—

- Two or more companies form a partnership or **joint venture** to act as a potential prime contractor
- A potential **prime contractor** agrees with one or more other companies to have them act as its **subcontractors** under a specified Government contract or acquisition program.

# How does SBA Define JV?

13 CFR 121.103(h) reads:

A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally.

# SBA Definition – cont'd

- This means that the joint venture entity cannot submit more than three offers over a two year period, starting from the date of the submission of the first offer. A joint venture may or may not be in the form of a separate legal entity. The joint venture is viewed as a business entity in determining power to control its management. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section

| FAR Terms | 13 CFR Terms | Common Usage |
| --- | --- | --- |
| Joint venture | Joint Venture in form of new legal entity | Joint Venture |
| Prime/sub team or SB Team or Teaming | Joint venture <u>not</u> in the form of a new legal entity | Small Business Team or Prime/sub team |

# What are the Advantages of Small Business Teaming?

- The JV or team is able to compete for larger more technically complex contracts by combining the capabilities and assets of various team members.
- Relaxed affiliation rules for SB joint ventures and prime/sub teams on procurements that meet certain requirements
- Relaxed performance of work requirements

# What is Affiliation?

## Normal Rule of Affiliation
13 CFR 121.103(h)(2)

- The members of a joint venture or team are considered to be affiliated for size purposes.
  - The size of each team member contributes to the total size of the joint venture or team.
  - The joint venture or team is small only if the combined annual receipts or employees of all the firms in the JV meet the size standard for the procurement

# What are the Relaxed Affiliation Rules? (13 CFR 121.103(h)(3))

- There is an exception to the normal rules of affiliation for joint ventures and teams on procurements that meet **certain requirements:**
  - A bundled procurement of any dollar value; or
  - For a procurement having a receipts based size standard, the dollar value of the procurement exceeds ½ the size standard; or
  - For a procurements having an employee based size standard, the dollar value of the procurement exceeds $10 million.
- For these procurements, the JV or prime/sub team is considered small so long as each member is small under the size standard assigned to the procurement

# In Other Words

- Relaxed affiliation means that so long as each JV venturer (in the case of a joint venture) or team member (in the case of a teaming arrangement) *individually* qualifies as a small business, then the JV or teaming arrangement qualifies as small.
- Relaxed affiliation rules apply to SB JV's and teams only on procurements that meet certain requirements.

# What are Performance of Work Requirements?

- Included in contract only if contractor must be small to be eligible for award
  - FAR clause 52.219-14, “Limitations on Subcontracting”
- Specifies per cent of contract work that must be performed by the small business prime contractor.
- Addressed in detail at 13 CFR 125.6

# What are *Relaxed* Performance of Work Requirements?

- 13 CFR 125.6(h)(i)
- Where an offeror is exempt from affiliation under §121.103(h)(3) *(relaxed affiliation rules)* of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the joint venture, not its individual members.

# What is a SB Prime/Sub Team?

- SB prime contractor agrees with one or more subcontractors to submit an offer on a SB set-aside procurement that meets certain requirements.
  - The prime/sub team is small if each member of the team qualifies as small for the procurement
  - Performance of work requirements apply to the cooperative effort of the team.

# SB Prime/Sub Team – cont'd

- SB prime contractor agrees with one or more subcontractors to submit an offer on a SB set-aside procurement that does not meet the above requirements.
  - the team is small only if the combined annual receipts or employees of all firms in the team meet the size standard for the procurement
  - Performance of work requirements must be met solely by the SB prime contractor.
  - Prime/sub teaming not beneficial

# SB Prime/Sub Team – cont’d

- Usually the teaming agreement is executed prior to submission of offer and included with offer.
- FAR allows a team to be formed after contract award
- Contract is awarded to the SB prime contractor who is solely responsible for contract performance
- Government has privity of contract only with the SB prime contractor.

# SB Prime/Sub Team – cont'd

- A business concern that is not small under the size standard for the procurement (a large business) cannot be a member of the prime/sub team.
- However – a large business can be a subcontractor on the contract so long as the prime/sub team meets the performance of work requirement.

# What About SB Joint Ventures?

- Two or more concerns form a joint venture creating a new legal entity to pursue federal procurements.
- For procurements that meet certain requirements:
  - The JV is small if each member of the team qualifies as small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

# SB Joint Ventures – Cont'd

- For procurements that do not meet the above requirements,
  - the JV is small if the aggregate size of all the members meets the size standard assigned to the procurement.
  - Performance of work requirements apply to the cooperative effort of the JV.

# SB Joint Ventures – Cont'd

- For any federal government procurement:
  - an 8(a) protégé firm may joint venture with its SBA approved mentor.
  - The JV is small so long as the 8(a) protégé qualifies as small for the procurement.
  - Performance of work requirements apply to the cooperative effort of the JV.

# SB Joint Ventures – Cont'd

- Contract is in the name of the JV entity
- Contract performance responsibility lies with the JV
- A JV entity may submit up to three offers over a two year period that starts with submission of first offer (13 CFR 121.103(h)).

# Can 8(a) Firms JV?

- For competitive 8(a) procurements that meet certain requirements:
  - 8(a) firm can JV with one or more other businesses and the JV is considered small so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.
  - The size of at least one 8(a) member of the JV must be less than ½ the size standard for the procurement

# 8(a) Firms – Cont'd

- For sole source and competitive procurements that do not meet the above requirements :
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

# 8(a) Firms – Cont'd

- For any 8(a) procurement
  - Any JV between 8(a) protégé firm and its approved SBA mentor is considered small so long as the 8(a) protégé is small for the procurement
    - Mentor firm may be a large business concern
    - Performance of work requirements apply to the cooperative effort of the JV.

# 8(a) Firms – Cont'd

- The 8(a) JV agreement must:
  - Set forth the purpose of the JV
  - Designate the 8(a) participant as the managing venturer and an employee of the managing venturer as the project manager
  - State that 51% of the net profits of the JV go to the 8(a) participant(s).
  - Provide for the establishment of a bank account in the name of the JV
  - Contain all the provisions listed in13 CFR 124.513(c).

# 8(a) Firms – Cont’d

- 8(a) joint venture agreements must be approved by SBA prior to award of the contract.
- Generally, prime/sub teaming is not used for 8(a) procurements

# Can SDB Firms JV?

- SDB JV's are permitted in order to take advantage of SDB procurement mechanisms such as
  - Price evaluation adjustments
  - Evaluation factors or subfactors
  - Monetary subcontracting incentives
  - SDB set-asides (if and when they become authorized)
- Disadvantaged participant to the JV must have SDB certification or have submitted an application for certification and not received negative determination.

# SDB Firms – cont’d

- The SDB must be the manager of the new JV entity, and an employee of the SDB must be the project manager responsible for contract performance.
- The JV must be applicable performance of work requirements.
- SDB prime/sub teaming does not appear to be an option allowed by the regulations.
- See 13 CFR 124.1002(f) for more information on SDB joint ventures.

# Can SDVOSB JV?

- For competitive SDVOSB procurements that meet certain requirements:
  - SDVOSB firm can JV with one or more other businesses so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

# SDVOSB – cont'd

- For sole source and competitive procurements that do not meet the above requirements :
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

# SDVOSB – cont'd

- SDVOSB JV agreement must:
  - Set forth purpose of JV
  - Designate SDVOSB as managing venturer and an employee of managing venturer as project manager
  - State that at least 51% of the net profits earned by the JV go the the SDVOSB venturer(s).
  - Contain other provisions as required by 13 CFR 125.15(b).
- SDVOSB prime/sub teaming does not appear to be an option contemplated by the regulations.

# Can HUBZone SB JV?

- For HUBZone procurements that meet certain requirements:
  - HZSB firm can JV with one or more other HUBZone certified firms to submit an offer for a HUBZone contract so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

# HUBZone – cont’d

- For procurements that do not meet the above requirements :
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement.
  - Performance of work requirements apply to the cooperative effort of the JV.
- HUBZone SB Prime/sub teaming does not appear to be an option contemplated by the regulations

# Where Can I Find the CFR's

Federal Regulations (CFR) on-line:

- http://ecfr.gpoaccess.gov

Size regulations -- 13 CFR Part 121

8(a) & SDB regulations -- 13 CFR Part 124

Government Contracting Programs – 13 CFR Part 125.6

HUBZone Program – 13 CFR Part 126

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